

Richard Knox, #45591
Appellant/Defendant
Montana State Prison
700 Conley Lake Road
Deer Lodge MT 59722

ORIGINAL FILED

July 1 2010

RECEIVED *Ed Smith*
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT FOR THE STATE OF MONTANA **Appellate Defender**

Richard Knox,
Appellant,

vs

State of Montana,
Respondent.

FILED

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STATE OF MONTANA

CAUSE NO. DA09-0548

Response to Anders Brief

Comesnow, Richard Knox, hereinafter Appellant files this response to the Anders Breif filed by his assigned counsel requesting the Court grant her dismissal from the case thus deeming his appeal wholly frivolous.

This appellant is not an attorney and has no training in law. What skills and abilities he does possess are in the construction trade. This therefore puts his fate at the mercy of those who are trained and work in the criminal justice field. As I see it, Justice is a process and one day there is nothing to cover a particular situation and then a case is decided and that becomes the law. Weeks or months later another is deicided by the same court or another and that is the new law. For those of us incarcerated it is impossible to tract or understand the individual statutes, cases or nuances or the law. Prior to State v Guillaume, 1999 MT 29 it was permissable to enhance felony offenses with a weapons enhancement. Over the next few years State v Whitehorn 2002 MT 54 and ultimately State V Lott 2006 MT 240 clarified that under certain offenses like felony assault no weapons enhancement can be applied. Point being that someone had to develop the idea that weapons enhancements on felony assault are illegal and argue said concept in court.

The central function of the courts is the pursuit of justice. Like all human endavors, this pursuit is occasionally flawed. This appellant is a simple man trying to pay his debt to society and move on with his life. While on parole it may be true that some boundries to the rules he was bound to adhere to were stretched. Over all he worked, paid his bills and reported to his parole officer. When confronted with accusations about his indiscretions with his parole rules he admitted to wrong doing and agreed to certain sanctions for his lapse in judgment. After all he did not reoffend or break new laws- he simply committed some technical violations on parole. Currently he has been returned to prison for this lapse in judgment to serve time. Perfectly acceptable to this appellant but what is not however acceptable is that additional punishments that keep being heaped upon him by an overly punitive system. Having to serve the remainder of his prison term due to his violation of parole (a term of 12 more years) was an extreme sanction but in some part understandable to this appellant but to endure the revocation of $\frac{1}{2}$ of his suspended time after that, thus extending his prison term another 9 years is draconian. People being sentenced currently for similar crimes to this appellant are not receiving a total sentence of 20 year and this appellant just received 21 years in prison for a technical violation. We must remember what is legal is not necessarily right. The punishment must fit the crime otherwise our system of justice is in jeopardy.

This appellant is at a loss to offer the court any reasons why or why they should not remove his appellant counsel of record from his case. Nor can this appellant articulate in legal terms how his rights are being violated by the current sentence. In his mind, that why people go to law school. Revocation of my parole and as a result, revocation of my probation time as well is vindictive to say the least being as this appellant substantially obeyed the laws of the land while on parole. Justice could have been served by shock detention in the county jail or a term on ISP rather than return to prison. Is it frivolous to appeal my sentence or was the proper argument offered to the court to decide to begin with. Who knows? This appellant leaves that in this courts capable hands as they are now in a position to have to safe guard this appellants rights.

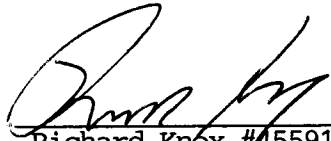
This appellant read that a term of parole, probation or supervised release that replaces a portion of imprisonment it is part of the original sentence. Revocation constitutes a modification of the term of the original sentence and implicates solely the punishment initially imposed for the offense conduct underlying that sentence. With that reasoning in mind it seems that something is patently wrong with this appellant now having two sentences according to the DOC. In reviewing if this appellants rights are being violated this courts needs to review and consider all statutes, case law and administrative rules (including ARM 20.25.304) to see if there is a potential arguable claim for relief available to this appellant.

This appellants main concern is that his rights are being upheld and that any future appealable claims or request for postconviction relief are properly preserved. To allow appellant counsel to withdraw from his case without fully exhausting available remedies, or fully researching potential avenues for relief is in itself a miscarriage of justice.

Done and dated this 27 day of June, 2010.

I, Richard Knox, hereby certify that I have mailed a true and correct copy of the above response to the below listed by depositing it in the U.S. Mail postage prepaid addressed as follow:

Ed Smith, Clerk
Montana Supreme Court
PO BOX 203003
Helena MT 59620-3003


Richard Knox #45591
Appellant